

**MINUTES OF  
ADVISORY COMMITTEE ON RULES OF EVIDENCE**

Friday, December 10, 2021

*Zoom-Only* (link denoted on public agenda)

Website: <https://www.azcourts.gov/rules/Advisory-Committee-on-Rules-of-Evidence>

**Members Present Virtually:**

Hon. Sara Agne  
Hon. Maria Elena Cruz  
Hon. Darci Weede  
Hon. Karl Eppich  
Mr. Andrew Becke  
Prof. Jessica Berch  
Hon. Doug Metcalf  
Mr. Mikel Steinfeld  
Hon. Danielle Viola  
Mr. George Krauja  
Hon. Monica Edelstein  
Hon. John Napper  
Mr. Randall Papetti  
Mr. Bill Hughes

**Members Not Present:**

Hon. Kellie Johnson (advised of emergency hearing in advance)

**Quorum:**

Yes

**1. Call to Order**

Judge Cruz called the meeting of the Committee (“ARE” or “the Committee”) to order at 10:01 a.m.

**2. Approval of Minutes from Meeting of September 17, 2021**

The minutes of the prior meeting noted above were approved by unanimous vote, without any changes, additions, or corrections, after a motion by Prof. Berch and a second by Mr. Steinfeld.

**3. Brief Report on CaseLines pilot per Admin. Order 2021-142, “Policies for the Submission and Management of Exhibits Submitted Through the Digital Evidence Portal”**

Judge Agne discussed practical experience with the Digital Evidence Portal project originally being piloted in Maricopa, Pima, and Mohave counties, which has now expanded to Coconino, Pinal, and Yavapai counties as well. Judge Napper and Mr. Hughes discussed how the program had started off in Yavapai County.

#### **4. Update re Order on Statewide Jury Selection Workgroup Pet'n R-21-0045, Occasioned by Order on R-21-0020, which eliminated peremptory challenges in jury selection**

Judge Cruz discussed how Arizona had recently become the first state in the nation to eliminate peremptory challenges in jury selection as a way of reducing to the greatest extent possible the role of improper bias in jury selection and by extension the role of improper bias by juries in the rendering of verdicts. The change is effective January 1, 2022. Judges Napper and Viola have both worked in-depth on these issues and discussed their experiences, and members of the Committee discussed the Arizona Supreme Court's recent adoption of rules encouraging the use of written questionnaires in voir dire.

#### **5. Update on Proposal to Amend Fed. R. Evid. 106**

Judge Metcalf, chair of the Rule 106 subcommittee, discussed the federal proposal to amend Rule 106, which remains in a public comment period. Judge Metcalf and subcommittee members Judge Weede, Judge Viola, and Mr. Krauja plan to meet in the new year regarding an eventual rule change petition to conform Arizona's Rule 106 to the federal changes.

#### **6. Update on Proposal to Amend Fed. R. Evid. 615**

Judge Eppich in place of Judge Johnson, chair of the Committee's Rule 615 subcommittee (who had a hearing conflict), provided an update on the federal proposal, which is still published for public comment. Public comments on the proposed changes to Rule 615, as well as public comments on the other proposed changes (Rules 702 and 106) are due no later than February 16, 2022, and a federal hearing will be held to take other public comment on January 21, 2022. The expected effective date for the federal rule changes is December 1, 2023, with Arizona corresponding changes then taking effect January 1, 2024.

#### **7. Update on Proposal to Amend Fed. R. Evid. 702**

Mr. Papetti, chair of the Committee's Rule 702 subcommittee, provided a detailed update on the federal proposal, which is among those published for public comment. Prof. Berch discussed one new comment that had arisen on Rule 702, but that it was an anonymous comment and generally against the proposed changes.

#### **8. Other Items for Discussion: Latest Agenda Book of the Advisory Committee on Evidence Rules ([November 2021](#)) & Discussion re Case Law Update**

Judge Agne reviewed portions of the Latest Agenda Book of the Advisory Committee on Evidence Rules, including those regarding possible changes to Rules 611 related to Rule 1006, as well as juror questions for witnesses during jury trials. Judge Cruz discussed preliminary proposals to amend Rules 407 and 613(b). Prof. Berch discussed how preliminary indications were that the federal bodies had elected to table discussions of any amendment to Rule 407.

#### **9. Next Meetings**

The 2022 schedule of meetings was set by acclamation to March 11, 2022, May 13, 2022, September 9, 2022, and December 9, 2022; 10 AM to Noon for each of them, to take place on Zoom until further notice.

#### **10. Call to the Public and Adjournment**

Judge Cruz made a call to the public. No members of the public were present virtually, though the agenda, containing the link, was posted publicly in advance on the Committee's website. The meeting was adjourned at approximately 10:55 a.m.

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